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April 27, 2020

VIA ECF

The Honorable Eric N. Vitaliano
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Marin et al. v. Apple-Metro, Inc. et al.*
Civil Action No. 12-cv-05274-ENV-CLP

Dove et al. v. Apple-Metro, Inc. et al.
Civil Action No. 13-cv-01417-ENV-CLP

Dear Judge Vitaliano:

We represent all Defendants with respect to the above-referenced cases. We write in response to Plaintiffs' letters to the Court dated April 24, 2020. While we do not object to the Plaintiffs' request to lift the stay in this matter, we wish to address some misstatements made to the Court concerning the potential settlement of this matter.

On March 9, 2020, prior to the unforeseen Government imposed shut down of the Company's restaurants, all parties participated in a mediation and came to a good faith understanding of the framework for a potential resolution to this matter. This resulted in a memorandum of understanding that laid out some of the basic terms of the potential resolution, but recognized that other material terms, (*e.g.*, an allocation formula for the class recovery), would be negotiated at a later date. Significantly, the memorandum of understanding was also, by its terms, subject to a more formal settlement agreement and all the material issues that would be addressed therein—an agreement that would, if finalized, be presented to the Court for approval.

Unfortunately, not long after the mediation, the entire World changed in ways that no one could have reasonably envisioned at the time of the mediation. As a result, and unfortunately, Defendants were not, and are not currently, in a position to continue to negotiate the remaining unresolved issues and reach a final agreement. Contrary to the statement contained in Plaintiffs' letters to the Court dated April 24, 2020, the Defendants have not "defaulted" with respect to any obligation. This is for the simple reason that no such obligation ever existed. Plainly stated,

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there was never a meeting of the minds on all material terms and an agreement was never reached.

Plaintiffs' position is curious given their own characterization of the status of the matter, in a letter to Your Honor dated March 11, 2020, as "an agreement in principle to resolve all claims" As they realized and articulated then, and we reiterate herein, this matter was far from fully resolved.

No one is happy about recent developments. Unfortunately, the very survival of the Company is now at issue. While the Company is as disappointed as the Plaintiffs that the matter cannot be currently resolved, it is hopeful that better times are ahead and the parties can revisit the potential amicable resolution of this matter.

Thank you for your time and consideration of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "CRB", with a stylized flourish extending from the end.

Craig R. Benson

CRB/mbm

cc: Counsel of Record (via ECF)